

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT HUNTINGTON

CUMIS INSURANCE SOCIETY, INC.,

Plaintiff,

v.

CIVIL ACTION NO.: 3:12-CV-6277
Judge Robert C. Chambers

JAMES L. RAINES, ALICIA RAINES
and DeANNE RAINES,

Defendants.

**DEFENDANTS' REPLY TO PLAINTIFF'S
MEMORANDUM IN OPPOSITION TO
DEFENDANTS' MOTION TO DISMISS**

The defendants, James L. Raines, Alicia Raines and DeAnne Raines, by counsel, S. Douglas Adkins and Cyrus & Adkins, reply to the plaintiff Cumis Insurance Society, Inc.'s (hereinafter "Cumis") Memorandum in Opposition to Defendants' Motion to Dismiss as follows:

I. DEFENDANT DeANNE RAINES

The plaintiff's Complaint includes DeAnne Raines as a defendant despite the fact the plaintiff seeks money damages of only \$7,135.00 against her. Clearly, this amount does not meet this Court's jurisdictional amount. See, 28 U.S.C. §1332(a).

The plaintiff contends that the Court has supplemental or pendent jurisdiction of DeAnne Raines pursuant to 28 U.S.C. §1367. The plaintiff further contends that since the claim against DeAnne Raines involves common facts to all defendants and for purposes of judicial economy, the Court may exercise jurisdiction over DeAnne Raines. The plaintiff's reliance upon 28 U.S.C. §1367 is misplaced. This statute permits supplemental jurisdiction

"over all other claims in the action within such original jurisdiction . . ." This section does not permit pendent party jurisdiction.

It is a fundamental precept that federal courts are courts of limited jurisdiction.

Owen Equipment & Erection Company v. Kroger, 437 U.S. 365 (1978). Limits on federal court jurisdiction, whether imposed by the Constitution or by Congress, must be neither disregarded nor evaded. Id. Moreover, a finding that federal and non-federal claims arise from a common nucleus of operative fact does not suffice to establish that a federal court has power to hear a non-federal as well as federal claim. Id.

Additionally, the doctrine of pendent jurisdiction is not applicable to diversity suits. Lawes v. Nutter, 292 F.Supp. 890 (S.D. Tex. 1968). This conclusion is based upon a careful study of Hurn v. Oster, 289 U.S. 238 (193) and United Mine Workers v. Gibbs, 383 U.S. 715 (1966) which illustrates that the discretionary doctrine of pendent jurisdiction should be reserved for cases presenting a substantial federal question along with a non-federal question on the same cause of action between the same parties. Robinson v. Castello, 331 F.Supp. 667 (E.D. La. 1971).

No federal question is present and the jurisdictional amount in controversy is not met regarding the claims against DeAnne Raines. Therefore, the plaintiff's claims against Deanne Raines should be dismissed.

II. THE SUBSTANCE OF THE PLAINTIFF'S CLAIMS IS FRAUD

The plaintiff's claim of unjust enrichment is mislabeled in an effort to avoid the clear failure of plaintiff to file this civil action within the applicable statute of limitations. The Court is required to look beyond the plaintiff's mislabeling of its asserted cause of action

and examine the substance of the asserted claim. Blankenship v. Ethicon, Inc., 221, W.Va 700, 656 S.E.2d 451 (2007).

Paragraph 20 of the plaintiff's Complaint alleges:

"Upon information and belief, James L. Raines, Alicia Raines, Deanne Raines and Carolyn Raines acted intentionally and with malice and knowledge of Mr. Raines' wrongful acts by withdrawing and utilizing the fraudulent deposits into their accounts."

Clearly, the plaintiff is alleging the defendants were part and parcel of a fraud. Additionally, the plaintiff alleges the fraud occurred between 2004 and August, 2008. See Complaint, paragraphs 7 and 9. Therefore, the plaintiff's claims against all defendants were filed beyond the applicable statute of limitations and should be dismissed.

WHEREFORE, the defendants respectfully request this Honorable Court to dismiss the plaintiff's Complaint, for reasonable attorney fees and expenses incurred herein and for such further relief as may be appropriate in the premises.

JAMES L. RAINES, ALICIA RAINES
and DeANNE RAINES,

BY COUNSEL

s/ S. Douglas Adkins, Esquire

WVSB #80

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CERTIFICATE OF SERVICE

I, S. Douglas Adkins, counsel for the defendants, James L. Raines, Alicia Raines and DeAnne Raines, do hereby certify that I have served a true and correct copy of the foregoing "Defendants' Reply to Plaintiff's Memorandum in Opposition to Defendants' Motion to Dismiss" upon the following counsel by electronic submission with the Clerk of the Court, on the 6th day of December, 2012, and that notification of such service has been filed electronically through the CM/ECF, as follows:

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